

REMARKS TO DETAILED ACTION

This is a response to the Office Action referenced by the Examiner as mailed on February 2, 2004, for the above-captioned application. The following remarks are organized by the paragraph headings and paragraph numbers used in the “Detailed Action” section of the Examiner’s Paper, beginning on page 2 therein:

Claim Rejections - 35 U.S.C. §112

After introducing the second paragraph of 35 U.S.C. 112, the examiner rejects claims 1, 2 and 5. The Applicants respond as follows, noting that no new matter is added by these revisions to claims 1, 2, and 5, and that these revisions are fully supported by the originally submitted specification and drawings:

Claim 1:

The Examiner rejects claim 1 for reciting the limitation “the photographer selection,” in lines 9, 12, 13 and 14 of the claim, and “the received photograph specification,” in line 10 of the claim. The Applicants, as herein above detailed, revise claim 1 to provide sufficient antecedent basis for these limitations in the claim.

Claim 2:

The Examiner rejects claim 2 for reciting the limitation “the user review” in line 3 of the claim. The Applicants, as herein above detailed, revise claim 2 to redefine this term as “a review by a user,” to provide sufficient antecedent basis for this limitation in the claim.

Claim 5:

The Examiner rejects claim 5 for reciting the limitation “the photographer generation and assignment,” in line 2 of the claim. The Applicants, as herein above detailed, revise claim 5 to redefine the term “a progress history of the photograph generation and assignment,” to “a photograph generation and assignment progress history,” providing sufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 U.S.C. §103

The Examiner introduces 35 U.S.C. §103(a) and then rejects claims 1 through 8, as being unpatentable over U.S. Patent No. 6,049,877 to White, in View of U.S. Patent No. 6,167,382 to Sparks et al.

The Examiner is requested to review the following discussion with the Applicants’ herein amended claims. The claims were amended to more clearly distinguish them over the prior art of record, namely to the issue of the prior art disclosures and teaching relating to the cataloging and searching

of existing graphical works versus the Applicants' invention the generation of original works at the request and direction and the user.

Regarding claim 1, the Applicants observe that Sparks '382 only deals with the cataloging, searching, manipulation and sales of existing, stock images. Therefore, the Applicants respectfully disagree with the Examiner's assertion that a photographer is selected. No "assignment" function is present in the cited references, only the search of an online database, as taught by White '877, followed by the purchase of existing products, slightly modified within the bounds of a template imposed by the host, rather than by a photographer at the direction of the client/user, as the Applicants propose. No reference cited teaches a selection of a photographer by a user, followed by a request made to that selected photographer, for a photograph that fits the user's specifications. However, the Examiner jumps to the erroneous conclusion that the on-line catalog template selection process of Sparks, added to the internet client authentication technology of White, somehow equates to the Applicants' claims, skipping the required step of photographer interaction.

As to claim 2, the Examiner again asserts that Sparks discloses interaction between a user and a photographer. Instead, the Applicants again observe that Sparks only discloses a "yes-or-no" acceptance by the user before a purchase of items. The pre-purchase "revision" that the Examiner refers to is a standard shopping cart type of approval, as typically employed in nearly every internet shopping site. Clicking items ordered before "check-out" for purchase is *not* an interactive exchange involving direct "review and comment" from the user to the photographer, as proposed in claim 2 by the Applicants. Sparks fails to teach a dialog of modification, only an accept/reject option to a content item of a purchase, within a virtual shopping cart. The Examiner apparently reads the

Applicants' claims as the simple selecting images from a catalog. The required step missing from the prior art is the selection of a photographer and supplying that photographer a set of specifications for a photograph, who then supplies the user with a photograph to meet the user's submitted specifications. Additionally, claim 2 is considered patentable because it depends from claim 1, which is considered patentable as discussed above.

As to claim 3, this claim is considered patentable because it depends from claim 1, which is considered patentable as discussed above. The use of user control codes is known, but not in the access of a program by a user that invites the generation of a photograph from a selected photographer at the request and direction of a user, and maintains the interaction in an electronically secure exchange.

As to claim 4, just as with claim 3, this claim is considered patentable because it depends from claim 1, which is considered patentable as discussed above. Additionally for claim 4, Sparks fails to disclose the access of a photographer to the interaction between the user/client and the photographs produced as a result of an assignment. There is no possible analogy within the process taught by Sparks, to the role of the photographer as required in the Applicants' claims. Again, the Examiner is erroneous in asserting there is an "assembly of pre-created images and templates from a library," in the Applicants' claims. There are no user modifiable "templates" in the Applicants' claims. A combination of Sparks and White fails to equate to the claims of the Applicants.

As to claim 5, this claim is also considered patentable because it depends from claim 1, which is considered patentable as discussed above. Granted, a progress history of an electronic interaction

is well known. However, such a history in association with a control program that interactively completes a photographic assignment at the direction of a user is not known. Again, the Examiner erroneously asserts that Sparks somehow teaches the role of the photographer interacting with the assignment specifications of the user, as required in the Applicants' claims.

As to claim 6, this claim is also considered patentable because it depends from claim 1, which is considered patentable as discussed above. Specifically, e-mail updates and communications are well-known. However, the generation of e-mails in the course of an interaction, where the user is interactively completing a photographic assignment at the direction of a user is not known, and is novel and patentable over the prior art of record.

As to claim 7, the Applicants' strongly assert that Sparks fails to teach the display of a progress work or illustration to the user. Instead, Sparks only discloses the display of the image selected by the user, for purchase. One skilled in the art could not take the disclosure of Sparks to teach the display of a photograph to a user, the photograph submitted in proposal by a third party photographer to the user in response to a specification submitted to the photographer by the user. Claim 7 is also considered patentable because it depends from claim 1, which is considered patentable as discussed above.

As to claim 8, the Applicants again disagree with the Examiner's assertion that Sparks' "image of a product" somehow equates with the "photographer" of the Applicants' claims. A photographer is an interactive active agent, not an item or an image of that item. The photograph produced by the Applicants' photographer may be exact, broad or even an abstraction, such as a blurred expression

of specific or non-specific elements. This is not the selection of one in a narrow set of hamburger images.

New claims 9 through 14 are added herein. These new claims depend from base claim 8 and are fully supported by the originally submitted specification and drawings. These claims are considered patentable over prior art for the reasons cited above.

Conclusion

In view of the above remarks regarding the cited art, it is respectfully submitted that the Applicants' invention is not rendered unpatentable. The Applicants assert that the claim 1 and the claims that depend therefrom are not merely successive searches of database for "the image of a product" as asserted by the Examiner. A photographer is not an image of a product. There is no database search for an actual image in the Applicants' claims. Only the review of images provided to the user in response to a specification, submitted to a photographer. The claim steps are unique and not disclosed by Sparks, White, or any other cited reference.

The Applicants believe that all of the Examiner's concerns have been fully addressed and that existing claims 1 through 8 and new claims 9 through 14, which are also supported by the originally filed specification, are all in condition for allowance. Claims 1, 2 and 5 are herein above amended only to place these claims compliance with formal, § 112 issues. The Applicants therefore respectfully request reconsideration of the claims in the application and a withdrawal of all rejections.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the application, the Examiner is invited to call Applicants' undersigned representative at (509) 453-1319.

Respectfully submitted,
Stratton Ballew PLLC

A handwritten signature in black ink, appearing to read 'C. Svendsen', with a stylized flourish at the end.

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